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Supreme Court, U.S.
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No. 93-1779

In The

Supreme Court of the United States

October Term, 1994

WILLIAM A. CALVO, III,

Petitioner,

vs.

THE FLORIDA BAR,

Respondent.

Petition For Writ Of Certiorari
To The Supreme Court Of The State Of Florida

BRIEF IN OPPOSITION

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SUMMARY OF ARGUMENT

The petitioner was disbarred after having been found, in a full evidentiary hearing, to have participated in fraud and other inappropriate acts relating to securities sales. The petition fails to establish the jurisdiction of this Court and raises no substantial federal question. The petition fails to comply with the requirements of Supreme Court Rule 14.1(h) that the Statement of the Case specify the stage in lower court proceedings at which the federal questions were raised, the method or manner of raising them, their disposition by the lower courts and the specific places in the record which reflect that the federal question was timely and properly raised.

DUE PROCESS

The language of the challenged rule is not unduly vague. It meets the criteria established by this Court when it upheld equally general provisions on the basis of established authoritative interpretation and the existence of traditional codes of behavior. In addition, there is no overbreadth doctrine applicable to vagueness analysis and the conduct of the petitioner was clearly unacceptable by any standard.

The petition does not establish that there was a denial of assistance of counsel. The petitioner was represented by counsel at the evidentiary hearing and the Referee acted within reasonable discretion in refusing to permit an additional attorney who was a potential witness.

The petitioner received adequate notice of the evidentiary hearing. There is no constitutional requirement that the petitioner receive notice of a filing of a complaint against him with a grievance committee or notice of the grievance committee's decision prior to the committee filing specifications against the attorney.

The petition fails to disclose any constitutional violations with respect to the Referees' evidentiary and discovery rulings.

EQUAL PROTECTION

The petition fails to establish any basis for the assertion that the assessment of costs against the petitioner was based upon a different standard than such assessment against others because of the petitioner's national origin.

The mere fact that the petitioner was enjoined under federal securities laws from engaging in a securities practice and also disbarred by The Florida Bar did not constitute cruel and unusual punishment. No other basis for concluding that the disbarment was cruel and unusual is cited in the petition.

The Referee's reference to the petitioner's place of birth in his general discussion of the petitioner's biographical background, with no further reference to national origin in the opinions of either the referee or the Florida Supreme Court, fails to establish prejudice based upon national origin.

EX POST FACTO

The rule under which the Petitioner was disbarred is not an ex post facto law as prohibited by the United States Constitution. First, the rule is not penal in nature. Second, the conduct for which the petitioner was disbarred occurred at a time when the rule was in effect. Third, while the rule was changed, the same conduct continued to remain a basis for disbarment after the change.

FEDERAL SECURITIES LAWS

The Court need not address the issue of construction of federal securities laws since neither the Referee or the Florida Supreme Court based their decisions upon federal law. The petitioner was disbarred for committing acts which violated Florida's rules of professional conduct.

DEFERENCE TO STATES

The Court has recognized that states have an important interest in maintaining and assuring the professional conduct of attorneys which they license. Accordingly, the Court has extended considerable deference to states in the administration of attorney discipline.

ARGUMENT

This case involves an attorney's disbarment for his direct, knowing, participation in securities fraud. Mr. Calvo received a full evidentiary hearing, with adequate notice, and was represented by counsel throughout the

proceeding. There is nothing unusual about the case and there are no federal constitutional issues bearing upon it.

In his report recommending that Mr. Calvo be disbarred, the Referee, after a full evidentiary hearing, found that:

> [T]he respondent acted with reckless disregard for the safety of the investors' money when he authorized and participated in the closing as attorney for the underwriter approximately two weeks after the deadline.
>
> * * *
>
> Respondent knew that short term loans had been arranged with several individuals who had no intention of purchasing stock. * * * The net result of this was that the company received, from the offering, approximately $130,000 and not the $964,000 specified in the prospectus. * * * These loans did not constitute proceeds of bona fide sales of stock to public investors, but actually constituted a fraud on legitimate investors.
>
> * * *
>
> Respondent fraudulently, with others, extended the offering period beyond the time specified. He, with others, obtained short term loans which inflated the number of shares allegedly sold. The loans were then repaid almost instantaneously with huge profits to the lenders. Neither of these events were ever disclosed to the investors.
>
> * * *
>
> In March, 1985, prior to the closing on April 22, 1985, Edward W. Bremer, President, director

> and principle (sic) stockholder of Electronics Warehouse was indicted in Maryland on seventeen counts of mail fraud. Respondent and the underwriter were advised about it but failed and neglected to supply this information to investors. * * * Authorizing and participating in the closing without making this disclosure was reckless and a breach of respondent's duty to investors.

[App. I, pp. 12-19]

The Florida Supreme Court found that the findings of the Referee were supported in the record by competent substantial evidence and disbarred Mr. Calvo.[1]

The petitioner takes a "shotgun" approach in which he raises a myriad of alleged constitutional violations, misconstrues the basis of much of the Referee's findings and the Florida Supreme Court's decision, and fails to cite anything in the record which would raise a substantial federal question.

I

The petition fails to establish that the constitutional issues were properly raised below.

An essential requirement for jurisdiction under 28 U.S.C., § 1257 is that a substantial federal question have been properly raised in the state court proceeding.

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[1] This Court has held that, with a few exceptions not relevant here, it will not exert its jurisdiction merely to review a decision of a state court upon a question of fact, and will not reexamine the state court's findings and conclusions of fact. *Portland Ry. Co. v. Railroad Commission*, 229 U.S. 397 (1913).

Accordingly, Supreme Court Rule 14.1(h) requires that the petitioner seeking review of a state court decision specify in the statement of the case:

> * * * the stage in the proceedings, both in the court of first instance and in the appellate courts, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by those courts; and such pertinent quotation of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears * * * as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari.

Mr. Calvo failed to comply with *any* of the above requirements of Rule 14.1(h).

Petitioner's failure to comply with Rule 14.1(h) is critical because it is well settled that this Court will not review a final judgment of a state court unless "the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system." *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 550, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987).

The Florida Supreme Court opinion makes only passing reference to a constitutional issue, stating that they "reject Calvo's contention that he was denied due process rights and that he cannot be disciplined under the rules of ethics in effect in 1985, which have been superseded by the new Rules Regulating The Florida Bar." This singular

reference to a constitutional question refers to only one of Mr. Calvo's arguments and fails to indicate the nature or manner in which the argument was raised at the trial level or the appellate level. Mr. Calvo's petition fails to establish that any of his constitutional arguments were ever properly preserved below. On this basis alone, the petition should be denied.

II

The petition fails to establish the existence of any substantial federal question relating to denial of due process.

Under the heading of due process, petitioner asserts that the regulation under which he was charged was unduly vague and an unconstitutional ex post facto law, that he was denied assistance of counsel and adequate notice, and that he was denied an adequate opportunity to engage in discovery and introduce evidence. He fails to provide support in the record for any of these claims.

A. Vagueness

The petition contends that former DR 1-102(A)(6), Fla. Bar Code of Pro. Resp., which Mr. Calvo was found to have violated, is too vague to meet constitutional requirements. The Rule provides that "[a] lawyer shall not * * * engage in any other conduct that adversely reflects on his fitness to practice law." The degree of specificity that the vagueness standard requires varies according to the nature of the statute and the need for fair notice or protection from unequal enforcement. *Village of Hoffman Estates, Inc. v. The Flip Side*, 455 U.S. 489, 498, 102

S.Ct. 662, 71 L.Ed.2d 362 (1982). This Court dismissed a claim of vagueness by a disciplined lawyer in the case of *In re Snyder*, 472 U.S. 634, 105 S.Ct. 2874, 86 L.Ed.2d 504 (1985), where the language of the challenged rule was at least as general as is the rule at issue in this case. The *Snyder* case involved Federal Rule of Appellate Procedure 46, which permits an attorney to be suspended or disbarred for "conduct unbecoming a member of the bar of the Court." In upholding the rule, the Court stated:

> The phrase "conduct unbecoming a member of the bar" must be read in light of the "complex code of behavior" to which attorneys are subject. * * * Read in light of the traditional duties imposed on an attorney, it is clear that "conduct unbecoming a member of the bar" is conduct contrary to professional standards that shows an unfitness to discharge continuing obligations to clients or the courts, or conduct inimical to the administration of justice. More specific guidance is provided by case law, applicable court rules, and "the lore of the profession," as embodied in codes of professional conduct.

Id. at U.S. 645. For purposes of vagueness analysis, there is no meaningful distinction between "conduct unbecoming a member of the bar" and "conduct that adversely reflects on his fitness to practice law." The Florida rule must also be read in light of the "complex code of behavior to which attorneys are subject" and the case law, applicable court rules, and "lore of the profession."

There is an additional important reason, articulated in *Parker v. Levy*, 417 U.S. 733, 94 S.Ct. 3039, 41 L.Ed.2d 1033 (1974), that the challenged rules meet vagueness

requirements. In *Parker*, the Court rejected a vagueness challenge to Articles 133 and 134 of the Uniform Code of Military Justice which proscribe "conduct unbecoming an officer and a gentleman," and "all disorders and neglects to the prejudice of good order and discipline in the armed forces." As in the case at bar, the petitioner in *Parker* had engaged in conduct that was clearly unacceptable. Nevertheless, he argued that the wording of the statute was unduly vague in general, thus attempting to introduce an overbreadth doctrine into the vagueness test. In addition to finding that the provisions, like the rule challenged here, were defined by a body of authoritative construction, the Court declined to apply an overbreadth doctrine to vagueness analysis. Referring to several cases it had analyzed, the Court stated:

> None of them suggests that one who has received fair warning of the criminality of his own conduct from the statute in question is nonetheless entitled to attack it because the language would not give similar fair warning with respect to other conduct which might be within its broad and literal ambit. One to whose conduct a statute clearly applies may not successfully challenge it for vagueness.

Id. at U.S. 756.

The challenged provision must not be read in a vacuum, but with due consideration of the acts of which the petitioner has been found guilty. The Referee found that Mr. Calvo acted with "reckless disregard for the safety of investors' money" and that he had participated in a "fraud on legitimate investors." Regardless of what other

conduct might be included within the scope of the challenged rule, it is surely clear to any attorney that the conduct described in the Referee's findings is not consistent with fitness to practice law.

Petitioner also argues that imposition of discipline pursuant to DR 1-102(A)(6) violated the constitutional prohibition of ex post facto laws.[2] In the first place, the prohibition of ex post facto laws applies only to criminal or penal provisions. *Re Sawyer*, 124 U.S. 200, 8 S.Ct. 482, 31 L.Ed. 402 (1888); see also *Collins v. Youngblood*, 497 U.S. 37, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990). Bar disciplinary provisions are not criminal or penal in nature. They are designed to ensure that attorneys meet minimum levels of fitness deemed necessary to adequately perform their function. *Clulow v. Oklahoma*, 700 F.2d 1291, 1297-98 (10th Cir. 1983), overruled in part on other grounds sub nom., *Garcia v. Wilson*, 731 F.2d 640 (10th Cir. 1984); *DeBock v. State*, 512 So. 2d 164 (Fla. 1987); In *DeBock*, the court explained:

> To strike the unworthy lawyer from the roll is not to add to the pains and penalties of the crime. The examination into character [as in the examination prior to admission] is renewed; and the test of fitness is no longer satisfied. For these reasons courts have repeatedly said that disbarment is not punishment. We reaffirm our holding . . . that bar disciplinary proceedings are remedial, and are designed for the protection of the public and the integrity of the courts. . . . For

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[2] Mr. Calvo includes this argument under the category of due process. He makes another ex post facto argument under a separate point in the petition which will be dealt with below.

> these reasons, the vast weight of judicial authority recognizes that bar discipline exists to protect the public, and not to "punish" the lawyer.

Id. at 166-167 (citation and footnote omitted).

Even if the challenged disciplinary rule were deemed to be criminal, its application to Mr. Calvo would not violate the ex post facto prohibition. This Court has defined an ex post facto law as:

> * * * one which imposes a punishment for an act which was not punishable at the time it was committed; or an additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required; or, in short, in relation to the offence or its consequences, alters the situation of a party to his disadvantage;"

Id. at U.S. 45-46.

Mr. Calvo was not disciplined pursuant to an ex post facto law. The challenged rule was in effect at the time he committed the acts for which he was disbarred and there were no changes in the nature of possible discipline or the quantum of evidence required. The only change was that the Florida Supreme Court restructured the bar's rules of professional conduct. The commission of fraud by an attorney was an ethical violation sufficient to result in disbarment at the time of Mr. Calvo's actions and has remained so since. According to petitioner's untenable definition of ex post facto, every lawyer who had committed an infraction was immediately exonerated when the Florida Supreme Court repealed the old ethical code and adopted the new one.

B. Assistance of Counsel

Mr. Calvo asserts that he was deprived of assistance of counsel because the Referee excluded Mr. Calvo's trial attorney on learning that he was a potential witness. Mr. Calvo admits that he had retained two attorneys to represent him at the hearing, and that one of them did do so. He contends, however, that such counsel was retained to handle only a particular aspect of the hearing and that he was "forced to conduct the defense, without any continuance," despite the fact that he was not prepared to do so. [Petition, p. 34] Thus, the due process right which he asserts is not a right to counsel, but a right to a particular lawyer to handle a particular portion of the hearing. This Court has never recognized such a right. To the contrary, the Court has recognized that, even as to the Sixth Amendment right to counsel, courts have the discretion to exclude particular lawyers under appropriate circumstances, including conflicts of interest. *Wheat v. United States*, 486 U.S. 153, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988). In so holding, the Court stated:

> We have further recognized that the purpose of providing assistance of counsel "is simply to ensure that criminal defendants receive a fair trial " [citation omitted], and that in evaluating Sixth Amendment claims, "the appropriate inquiry focuses on the adversarial process, not on the accused's relationship with his lawyer as such." [citation omitted] Thus, while the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to

> guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.

Id. at U.S. 159.

With respect to his counsel having to proceed without a continuance, Mr. Calvo fails to cite any record support for the fact that he requested that the Referee grant a continuance and was denied it, and that he raised a federal constitutional issue before the Referee.

C. Notice

Mr. Calvo argues that he was denied his due process right to receive adequate notice, citing *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972). *Fuentes* simply holds that notice and hearing "must be provided before the deprivation at issue takes effect." *Id.* at U.S. 82. It is undisputed that Mr. Calvo received a full hearing before his disbarment, and that he received substantial notice prior to that hearing. The notice which Mr. Calvo refers to is his failure to receive notice of the filing of a complaint against him until it was referred to a grievance committee, and his failure to receive notice of the grievance committee decision until specifications were filed against him. The Bar's failure to provide such notices is completely irrelevant to any federal constitutional right.

Petitioner also complains about the substantial lapse of time between the grievance committee's authorization for the Bar to proceed and the filing of specifications by the Bar. Mr. Calvo cites no authority for the proposition that such a delay implicates a federal constitutional right,

and this Court has never recognized a constitutional "statute of limitations" on the filing of disciplinary proceedings against lawyers. In addition, the Referee, while weighing the delay as a mitigating factor in Mr. Calvo's favor, found that, "[R]espondent has substantially contributed to the delay and has not demonstrated specific prejudice resulting from the delay." [App. I, p. 22] The only prejudice alleged in the petition is that "potential witnesses had disappeared or were outside of the Referee's jurisdiction." No record support is cited for the assertion.

D. Discovery and Evidence

The petitioner complains that he was unable to obtain certain materials from the Securities and Exchange Commission, that the Bar failed to provide certain information and had lost other information, and that the Referee made improper rulings regarding the admission of various items of evidence. Needless to say, every ruling by a state judge or hearing officer regarding discovery and admissibility of evidence is not reviewable by this Court. As with his other points, Mr. Calvo fails to describe with any detail the nature of the discovery information denied him and the evidence ruled upon, and fails to make a record showing that any federal constitutional issue was implicated and preserved.

III

The petition fails to establish that Mr. Calvo was denied equal protection rights.

The petitioner claims that his right to equal protection was violated by the imposition of costs against him, by the application of disciplinary standards in his case, and by reference to his Colombian ancestry. He fails to establish a basis for granting certiorari as to any one of these claims.

A. Costs

Mr. Calvo argues that the Florida Supreme Court applied a different standard to him when it assessed costs against him than it applied in *The Florida Bar v. McCain*, 330 So. 2d 712 (Fla. 1976), when it assessed no costs against the attorney disciplined in that case. Mr. Calvo concludes, with no effort at substantiation, that the difference was based upon his membership in a minority class.

Under Florida law, the imposition of costs in a disciplinary proceeding is left to the discretion of the referee. *The Florida Bar v. Chilton*, 616 So. 2d 449, 451 (Fla. 1993); *The Florida Bar v. Miele*, 605 So. 2d 866, 868 (Fla. 1992); *The Florida Bar v. Carr*, 574 So. 2d 59 (Fla. 1990). Generally, Florida law provides that when there is a finding that an attorney has been found guilty of violating a provision of the ethical rules, the bar should be awarded its costs. *The Florida Bar v. Davis*, 419 So. 2d 325, 328 (Fla. 1982). However, the referee and the Supreme Court may consider various circumstances in deciding whether or not to make such an award. *Id.* The standard the court considered in *McCain* was whether the referee abused his discretion as

to the issue of costs. Mr. Calvo cites nothing in the record to suggest that the Referee or the Florida Supreme Court assessed costs against him according to a different standard than they have been assessed against others, and that if they did do so, it was because of Mr. Calvo's national origin.

B. Right to Non-Arbitrary, Cruel or Unusual Punishment

Mr. Calvo claims that the imposition of discipline on him constitutes cruel and unusual punishment, violative of the Eighth Amendment of the United States Constitution. Inasmuch as the discipline of disbarment is not a punishment, the Eighth Amendment has no application. *Ingraham v. Wright*, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977); *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 65 S.Ct. 591, 92 L.Ed.2d 628 (1948).

Even if such discipline were considered punitive, Mr. Calvo has failed to establish a sufficient federal question or conflict with this Court or other courts as applied to him. The only specific act mentioned by Mr. Calvo as cruel and unusual is that the discipline of disbarment was unfair as a "multiple punishment," apparently in light of the SEC's independent imposition of sanctions against him. Nothing in the petition explains how the SEC and Florida Bar actions constitute multiple punishment in violation of the United States Constitution. The two proceedings served entirely separate purposes, neither of which is punitive in nature. Even if both proceedings had been criminal, the United States Constitution permits separate punishment for the same acts if they violate both

federal and state laws. *Heath v. Alabama*, 474 U.S. 82, 106 S.Ct. 433, 88 L.Ed.2d 387 (1985); *United States v. Wheeler*, 435 U.S. 313, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978).

C. Prejudice Based on National Origin

Mr. Calvo seizes upon a single reference in the Referee's findings to his nation of birth as evidence that the entire proceeding was corrupted by prejudice. The reference is located in a short paragraph giving Mr. Calvo's biographical background, followed by a chronology of his education and professional experience. [App. I, p. 20] There is no other reference to the petitioner's national background in the Referee's report and Mr. Calvo cites no reference anywhere else in the record. At no point in the Referee's findings or recommendations was his place of birth discussed as either an aggravating or mitigating circumstance for purposes of imposition of discipline. Mr. Calvo does not offer any record evidence to support the bald allegation that his national origin had any bearing upon the proceedings or the disbarment.

IV

The petition fails to establish that the disbarment of Mr. Calvo constituted an application of an ex post facto law.

Petitioner argues that he was subjected to an ex post facto law because the Referee and the Florida Supreme Court supposedly relied upon expert testimony which interpreted federal securities laws differently than they

had been interpreted in a continuing legal education seminar sponsored by the Bar.

Petitioner's point is misplaced for three reasons. First, as noted above, the ex post facto prohibition applies only to criminal or penal provisions, which bar disciplinary measures are not. Second, Mr. Calvo's entire argument is premised upon a continuing legal education seminar outline that was prepared by another practicing attorney. The outline is not a legislative enactment such that a subsequent Supreme Court decision creates an unforeseeable judicial enlargement of a penal statute. The Florida Bar's complaint against Mr. Calvo alleged that he violated DR 1-102(A)(1), and DR 1-102(A)(6). Those rules provide that it is an ethical violation for an attorney to violate a disciplinary rule or to engage in any conduct that adversely reflects on his fitness to practice law. It is these rules under which the Supreme Court issued its discipline, not an attorney's outline discussing issues of securities law practice. Third, as discussed more fully below, neither the Referee's findings nor the Florida Supreme Court's decision were based upon federal securities statutes that were allegedly interpreted in the continuing legal education outline.

V

The decision to disbar the petitioner was not based upon an interpretation of federal law.

Petitioner's final point rests upon his assertion that his disbarment is based upon a ruling that "attorneys representing underwriters are, as a consequence of unidentified federal rules, 'experts' for purposes of liability

under the Securities Act of 1933, as amended", and that the Florida Supreme Court opinion stands for the proposition that "attorneys representing underwriters in federally registered securities offerings are jointly responsible, with the issuer and the underwriter, for the sale of offered securities." [Petition, pp. 62-63] It is not necessary for this Court to address the issue of the proper construction of the federal statutes to which Mr. Calvo refers because it is clear that his disbarment was not based upon any interpretation of federal law.

The only reference to federal securities laws in the Florida Supreme Court opinion is in its discussion of Mr. Calvo's argument that the Referee erred when he took notice of the SEC and federal cases arising out of the same conduct being considered by the Referee. The Court concluded:

> We agree with Calvo that SEC disciplinary proceedings are subjected to a different standard of review than are Bar discipline proceeding, but we find that this difference goes only to the weight to be accorded the information in a Florida disciplinary proceeding, not to its admissibility.

App. I, pp. 4-5.

The Florida Supreme Court disbarred Calvo not for a violation of federal rules or statutes, but for engaging in conduct "that adversely reflects on his fitness to practice law." The Referee discussed Mr. Calvo's conduct in detail and found that it adversely reflected upon his fitness to practice law. All of the referee's findings were made without reference to the federal law allegedly misinterpreted by the Referee and the Florida Supreme Court.

The Supreme Court concluded that the Referee's findings were supported by competent, substantial evidence and disbarred Mr. Calvo for violation of the Florida disciplinary rules, not federal law.

This Court's only power over state judgments is to "correct them to the extent that they incorrectly adjudge federal rights." *Herb v. Pitcairn*, 324 U.S. 117, 125, 69 S.Ct. 459, 89 L.Ed. 89 (1945). Therefore, if a state court decision rests on independent and adequate state grounds, the Court lacks jurisdiction to review the case or claim. *Enterprise Irrigation District v. Farmers Mutual Canal Co.*, 243 U.S. 157, 164 (1917). As Justice Brennan has stated, these judgments "not only cannot be overturned by, indeed are not even reviewable by, the Supreme Court of the United States. We are utterly without jurisdiction to review such cases." Justice Brennan, *State Constitutions and the Protections of Individual Rights*, 90 Harv. L. Rev. 489, 501 (1977). This Court has stated that jurisdiction exists "when it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground and when it fairly appears that the state court rested its decision primarily on federal law. *Michigan v. Long*, 463 U.S. 1032, 1042 (1983). Here, the language of the Florida Supreme Court opinion clearly shows that its decision to disbar Calvo was based on conduct which violated Florida standards of fitness to practice, not on any particular violation of federal law or rule.

VI

The Court should adhere to its policy of extending considerable deference to states in the administration of attorney discipline.

This Court has noted that a state has "an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses for the protection of the public, the purification of the bar and the prevention of a re-occurrence." *Middlesex Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 434 (1981). Justice Brennan, concurring in the *Middlesex* judgment, stated that, "[T]he traditional and primary responsibility of state courts for establishing and enforcing standards for members of their bars and the quasi-criminal nature of bar disciplinary proceedings [citation omitted] call for exceptional deference by the federal courts." *Id.* at U.S. 438, Brennan, J. concurring. This "exceptional deference" has been translated by the Court into rules for reviewing state court decisions regarding attorney admissions and discipline. In *Theard v. United States*, 254 U.S. 278, 281 (1956), the Court stated:

> It is not for this Court, except within the narrow limits for review open to this Court, as recently canvassed in *Konigsberg v. State Bar of California*, 353 U.S. 252, and *Schware v. Board of Bar Examiners*, 353 U.S. 232, to sit in judgment on [state] disbarments * * * .

In *Schware v. Board of Bar Examiners*, 353 U.S. 232, 239 (1956), the Court held that the standard of review of a state supreme court decision not to admit a bar candidate due to a finding of lack of moral character is "whether the [State Supreme Court] on the record before us could

reasonably find that he had not shown good moral character." The Court applied a similar deferential test in *Konigsberg v. State Bar of California*, 353 U.S. 252, 262 (1956), stating the question as "[d]oes the evidence in the record support any reasonable doubts about Konigsberg's good character or his loyalty to the Governments of State and Nation?" Applying the cited standard to the case at hand, it becomes clear that the Florida Supreme Court "could reasonably find" that Calvo violated DR 1-102(A)(6) by engaging in conduct that adversely reflects on his fitness to practice law.

CONCLUSION

The Court is respectfully urged to deny the petition for certiorari.

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